

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DANA GIBSON,	)	CASE NO. 1:10CV2014
	)	
Petitioner,	)	
	)	JUDGE ZOUHARY
v.	)	
	)	MAGISTRATE JUDGE VECCHIARELLI
KEITH SMITH, Warden,	)	
	)	<b>REPORT AND RECOMENDATION</b>
	)	
Respondent.	)	Docket #10

Petitioner, Dana Gibson, moves to voluntarily dismiss his petition to allow him to pursue state remedies. Doc. No. 10. Respondent does not oppose Gibson's motion. Doc. No. 12.

Respondent has not yet filed an answer in response to Gibson's petition. Rule 12 of the Rules Governing Section 2254 Cases provides that the Federal Rules of Civil Procedure may be applied to proceedings pursuant to 28 U.S.C. § 2254 whenever those rules do not conflict with other Rules Governing Section 2254 Cases. Fed. R. Civ. P. 41(a)(1) permits a plaintiff to dismiss an action unilaterally without prejudice if a defendant has not yet responded with an answer.

As dismissal of this action without prejudice is permitted by Fed. R. Civ. P. 41(a)(1) and does not conflict with other Rules Governing Section 2254 Cases, and as respondent

does not object to the dismissal, the court should grant Gibson's motion and dismiss the action without prejudice.

Date: November 9, 2010

/s/ Nancy A. Vecchiarelli  
United States Magistrate Judge

### **OBJECTIONS**

**Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days after the party objecting has been served with a copy of this Report and Recommendation. Failure to file objections within the specified time may waive the right to appeal the District Court's order. See United States v. Walters, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). See also Thomas v. Arn, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111.**